

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

TYLER GALLAHER,)
Petitioner,) Case No. 3:16-CV-481
v.) Judge Travis R. McDonough
STATE OF TENNESSEE,) Magistrate Judge C. Clifford Shirley,
Respondent.) Jr.,

MEMORANDUM OPINION

On August 3, 2016, the Court entered a memorandum and order [Doc. 2], requiring prose Petitioner Tyler Gallaher to file, within thirty days of that date, an amended petition for a writ of habeas corpus under 28 U.S.C. § 2254. The order advised Petitioner of numerous deficiencies contained in his original petition [Doc. 1] that could only be corrected by filing an amended pleading [Doc. 2]. For Petitioner's convenience, a preprinted § 2254 application form was enclosed with the order [*Id.*]. Petitioner was forewarned that, if he failed to comply with the order in a timely fashion, the Court would assume that he did not wish to proceed in his attack on his state court judgment and would dismiss his petition without prejudice [*Id.*].

Now before the Court is Respondent's motion to dismiss for failure to prosecute [Doc. 5]. As Respondent correctly points out in its motion, more than one year has passed since entry of the Court's order and, despite the Court's warning of the consequences of such a failure, Petitioner has not submitted an amended § 2254 petition or otherwise communicated with the Court. Under the circumstances, the Court concludes that Petitioner willfully refused to comply with the order. Respondent's motion to dismiss is well taken and it will be **GRANTED** [*Id.*].

Therefore, Petitioner's pro se petition for a writ of habeas corpus brought under 28 U.S.C. § 2254 [Doc. 1] will be **DISMISSED** without prejudice for want of prosecution, under Rule 41(b) of the Federal Rules of Civil Procedure.

Due to the nature of this dismissal, the Court **FINDS** that Petitioner has not made a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and that jurists of reason would not find it debatable whether this Court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Hence, a certificate of appealability will not issue.

AN APPROPRIATE ORDER SHALL ENTER.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE